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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,735	09/29/2003	Martin Miller	455610-2590.2	1934
20999 7590 06/14/2007 FROMMER LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151			EXAMINER CHUNG, PHUNG M	
			ART UNIT 2117	PAPER NUMBER
			MAIL DATE 06/14/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/673,735	<b>Applicant(s)</b> MILLER ET AL.	
	<b>Examiner</b> Phung My Chung	<b>Art Unit</b> 2117	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 22-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the ~signee must fully comply with 37 CFR 3.73Co).

Claims: a) 1-4, 8-10 and 17-21 and

b) 1-21 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims:

a) 1-4, and 10-13 of copending Application No. 10/673,712, and claims 1-4, 7 and 9 of copending Application No. 10/673,713;

Art Unit: 2117

b) 1-21 of copending Application No. 10/673,736. Although the conflicting claims are not identical, they are not patentably distinct from each other because all the limitation of the rejected claims are claimed in at least one of the claims limitation of:

a) 1-4, and 10-13, and claims 1-4, 7 and 9 of application' copending applications, and there is no reason why the rejected claims could not have been presented in the copending applications 10/673,712, 10/673,713 and

b) claims 1-21 of the instant application 10/673,735 are apparatus claims and claims 1-21 of the copending application 10/673,736 are method claims which are broader in scopes.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claims Comparison Table***

Claims:	a) 10/673,735	10/673,712	10/673,713
	1	1	1-4, 7 and 9
	2-4	2	
	8-9	3	
	10	12	
	17	10	
	18-20	4, 13	1-4, 7 and 9
	21	11	

Art Unit: 2117

Claims:	b) 10/673,735	10/673,736
	1	1
	2	2
	3	3
	4	4
	5	5
	6	6
	7	7
	8	8
	9	9
	10	10
	11	11
	12	12
	13	13
	14	14
	15	15
	16	16
	17	17
	18	18
	19	19
	20	20
	21	21

Art Unit: 2117

2. Applicant's arguments filed on 3/26/07 have been fully considered but they are not persuasive because:

Applicant argues that since the scope of the claims in such copending applications has not been determined, it is premature to consider whether the claims of the instant application define an obvious variation of the claims in the copending applications. Therefore Applicants request that this provisional rejection be held in abeyance and reconsidered at the completion of prosecution.


Examiner disagrees with applicant because the provisional double patenting rejection is for a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented. (See MPEP form paragraph 8.35). Therefore, it is not premature to reject claims of the instant application on the ground of double patenting before prosecution of those applications has been completed.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phung My Chung whose telephone number is 571-272-3818. The examiner can normally be reached on Monday to Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jacques Louis-jacques can be reached on 571-272-6962. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2117

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Phung My Chung  
Primary Patent Examiner  
Art Unit 2117